

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY CERTIFICATION**Consistency Certification No. **CC-055-05**

Staff: MPD-SF

File Date: 4/19/2005

3 Months: 7/19/2005

6 Months: 10/19/2005

Commission Meeting: 7/13/2005

APPLICANT: North County Transit District**DEVELOPMENT****LOCATION:**

Middle Agua Hedionda Lagoon Crossing, East of Carlsbad Blvd.,
and west of I-5, Agua Hedionda Lagoon, Carlsbad, San Diego
County (Exhibits 1-2)

DEVELOPMENT**DESCRIPTION:**

Replacement of Railroad Bridge (Exhibits 3-9)

SUBSTANTIVE FILE**DOCUMENTS:**

See page 18.

EXECUTIVE SUMMARY

The North County Transit District (NCTD) has submitted a consistency certification for the replacement of the existing deteriorating railroad bridge over Agua Hedionda Lagoon in Carlsbad. The replacement bridge would be a single-track, concrete bridge, replacing an existing wood piling bridge, which would be removed. The existing bridge is deteriorating, primarily due to wood borer infestation, and has limited load bearing capacity. The project includes realignment of 3,565 ft. of existing track. Maintaining the bridge and the rail line is essential to serve the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD's Coaster commuter rail service, Southern California Regional Rail Authority's Metrolink commuter rail service, Amtrak's Pacific Surfliner intercity rail service, and Burlington Northern and Santa Fe Railway's freight service.

The project will help maintain highway capacity on I-5 for public access to and along the shoreline. Section 30252 of the Coastal Act encourages maintenance and enhancement of public access through facilitating the provision or extension of transit service. Section 30253 (the air quality policy) also promotes energy consumption-reduction strategies (e.g., reducing automobile vehicle miles traveled). The project will not cause any adverse temporary or permanent access impacts; in fact the only access concern raised is whether the project will affect or preempt planning options for: (1) the coastal rail trail, a region-wide bicycle and pedestrian trail linking the entire County shoreline region and which contemplates a lagoon crossing in this “middle lagoon” area of Agua Hedionda Lagoon; and/or (2) other regional trails, such as the City’s proposed trail along the north shore of the lagoon, which might cross underneath the proposed bridge if the existing (to the west) and proposed (to the east) trail segments to either side of the bridge were to be connected. Some access occurs under the bridge now, although NCTD’s position is that this is not legal access. While NCTD does not encourage access under the bridge, it does not actively pursue violations, and in fact the proposed bridge replacement design will provide for increased vertical clearance and the removal of bents (cross-bracing) (Exhibits 4-5). NCTD states that: “Such design does not include the construction of fences or trespassing-control barriers in the area located underneath the railroad bridge” and that NCTD “...will continue to work with the City in good faith via the plan review process that is currently in place regarding all proposed third-party projects that may affect the railroad right-of-way.” With this commitment, the Commission agrees with NCTD that the project: (1) would not adversely affect any existing public access opportunities; (2) would not preclude options, and may even help facilitate trail access along the north shore of the lagoon and underneath the bridge, if that is ultimately selected as the desired trail link; and (3) would improve public access by maintaining the rail line, which reduces automobile traffic on I-5, in an area where the highway supports public access and recreation. The project is therefore consistent with the public access and recreation policies (Sections 30210-30212 and 30252) of the Coastal Act.

The project will slightly reduce the total square footage of bridge pilings in the lagoon. Nevertheless, because new piles will be placed in the lagoon, the project triggers the 3-part test of Section 30233(a) of the Coastal Act. The project meets these tests because: (1) it is an allowable use as an incidental public service (the Commission has historically interpreted Section 30233(a)(5) to allow a limited expansion of an existing transportation facility necessary to maintain existing capacity); (2) it is the least damaging feasible alternative; and (3) it includes avoidance, monitoring, and mitigation measures where appropriate. Also, Agua Hedionda Lagoon is one of the “priority wetlands” afforded additional protection under Section 30233(c). The project will not alter Agua Hedionda, and it can be considered a “very minor incidental public facility” based on the rationale discussed in the Commission’s wetlands guidelines and a number of past Commission reviews, which apply the same test under Section 30233(a) as under Section 30233(c) – that a limited expansion of an existing transportation facility that is necessary to maintain existing capacity is an allowable use as an incidental public service. Finally, the project will not adversely affect the functional capacity of Agua Hedionda Lagoon, a secondary test of Section 30233(c). Therefore, the project is consistent with the applicable wetland tests of Section 30233(a) and (c) of the Coastal Act.

The project is not located within any environmentally sensitive habitat, and with the measures included, would be consistent with the sensitive habitat policy (Section 30240) of the Coastal Act. The project will remove creosote soaked piles from the lagoon and includes appropriate Best Management Practices (BMPs) to minimize water quality impacts from construction and operation of the project (with the final “SWPPP” and “SPCC” plans to be reviewed and approved by the Commission staff). The project is therefore consistent with the water quality policies (Sections 30231 and 30232) of the Coastal Act. The project will not adversely affect public views and is consistent with Section 30251 of the Coastal Act.

I. STAFF SUMMARY AND RECOMMENDATION:

A. Project Description. The North County Transit District (NCTD) proposes to replace the single-track railroad bridge over the middle of the three sub-lagoons at Agua Hedionda Lagoon in Carlsbad (Exhibits 1-2). The site is approximately one-half mile south of Tamarack Avenue, three-quarters mile north of Cannon Road, and west of Interstate 5. The existing wood piling bridge is deteriorating, primarily due to wood borer infestation. Despite several temporary repairs, several pilings are in “non-bearing” condition, and the bridge currently retains less than half of its load bearing capacity. The primary project purpose is to restore structural and operation capacity for trains passing over Agua Hedionda Lagoon.

The rail line serves the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD’s Coaster commuter rail service, Southern California Regional Rail Authority’s Metrolink commuter rail service, Amtrak’s Pacific Surfliner intercity rail service, and Burlington Northern and Santa Fe Railway’s freight service. Upon replacement of the bridge, full operational efficiency would be restored, and public and environmental safety concerns alleviated for people and freight being transported by rail over Agua Hedionda Lagoon.

The proposed project consists of three primary components: (1) construction of a new, 214 ft. long, 19 ft. wide, concrete railroad bridge, adjacent to and 23 ft. (center-to-center) west of the existing bridge; (2) realignment of approximately 3565 feet of main track; and, 3) removal of the existing timber trestle railroad bridge. Bridge support within the lagoon would consist of two 66-inch-diameter pile extensions, to be placed just inside the Ordinary High Water Mark (OHWM) on either side of the lagoon. The area is inundated during higher tides, with a primarily rock/riprap lagoon floor exposed during lower tides.

Embankment grading for the track approaches would involve widening the existing trackbed embankment by placing approximately 40 feet of fill width on the west side of the existing trackbed embankment. At the bridge abutments, the embankment fill height would be approximately 30 feet high to the bottom of subballast. The required fill width would taper down further from the bridge as the new and existing track alignments converge. Approximately 18,970 cubic yards of total embankment fill would be required for this project. Cut areas of 8,031 cubic yards would include a graded track ditch for runoff and variance slopes designed at 1.5:1. Fill slopes would at 2:1 ratios.

The project would also involve the removal of the existing single-track, and wooden railroad bridge. This bridge consists of fourteen 14-foot spans, was originally built in 1948 (the rail line was originally built in the late 1880s), and is approximately 200 feet long and 26 feet wide, with a maximum height of about 35 feet over the bottom of the lagoon channel. The piles on land would be removed to at least three feet below grade, and the piles and encasements in the water would be removed to a similar depth or to the mud line where the channel mean low water is deeper than three feet. Existing riprap would be restored or replaced.

An MCI underground fiber optic cable is located directly west of and adjacent to the existing mainline track for the majority of the project length. Construction of the proposed project would require relocation of the MCI cable within the limits of the bridge and the approaches.

The construction staging area would be located in an existing cleared area to the west of the existing tracks on the north side of the lagoon. Access to the staging area on the north would be via Garfield Street (off of Tamarack Avenue, west of I-5) through an existing gate and paved driveway to a fish hatchery, then onto an existing dirt road currently used by utility vehicles performing inspection and maintenance activities. Access to the south bank would be via Carlsbad Boulevard near Cannon Road through an existing power plant gate and paved roads to the existing tracks, where a dirt maintenance road runs north along the tracks utilizing two at-grade crossings. NCTD estimates the construction period to be seven months.

To the south of the site are the Cabrillo Power Plant and agricultural activities. To the east is a utility pipeline crossing the lagoon on a separate structure. To the southwest in the lagoon is a mussel farm. To the north is residential development. Carlsbad State Beach is approximately 1500 ft. to the west.

B. Procedures – Permitting Issue. The project triggers federal consistency review because it needs a U.S. Army Corps of Engineers (“Section 404”) permit. The Commission also believes it is subject to the permitting requirements of the Coastal Act; however, NCTD disagrees with this position. Notwithstanding this disagreement about whether a coastal development permit (CDP) is needed, the Commission concurs with this consistency certification because it is consistent with Chapter 3 of the Coastal Act. Any permit review would involve the same substantive standard of review (i.e., Chapter 3), because the Agua Hedionda Lagoon portion of the City’s LCP has not been fully certified. The Commission notes that the NCTD has applied for a number of permits for its rail improvement activities in other sections of the coast, including CDP’s No.: 6-03-102-G (Agua Hedionda emergency repairs), 6-02-152 (San Luis Rey River bridge repair), 6-02-151 (Agua Hedionda bridge), 6-02-102 (Del Mar drainage outlets), 6-02-80 (Santa Margarita Bridge repair), 6-01-64 (Balboa Avenue), 6-01-108 (Tecolote Creek), 6-93-60 (Del Mar), 6-94-207 (Solana Beach), 6-93-106 (Carlsbad), and 6-93-105 (Camp Pendleton).

C. Applicant’s Consistency Certification. The North County Transit District certifies that the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

II. Staff Recommendation and Motion. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **concur** with the North County Transit District's consistency certification CC-055-05 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Certification:

The Commission hereby **concurs** with the consistency certification by the North County Transit District, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

III. Findings and Declarations.

The Commission finds and declares as follows:

A. Public Access and Recreation. Sections 30210-30212 of the Coastal Act provide for maximum public access to the shoreline, consistent with, among other things, public safety needs and fragile habitat protection. Section 30252 encourages mass transit and identifies reducing traffic congestion as a coastal access benefit. These sections provide, in relevant part, that:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access , which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,....

Section 30252: The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service....

In reviewing several past actions involving mass transit improvements in San Diego County, the Commission has considered traffic congestion to constitute a constraint on public recreation and access to the shoreline. Increased traffic on highways such as I-5, which is a major coastal access thoroughfare, reduces the ability of the public to attain access to coastal recreation areas and makes it more difficult for the public to get to the beach. Section 30252 of the Coastal Act recognizes the importance of improving public access through, among other things, improvements in public transit. Maintaining existing public transit is equally important and beneficial to public access. Concerning access issues in general, NCTD states:

The proposed action will not interfere with existing public access to coastal areas and recreational opportunities. The project will be constructed within an existing designated transportation corridor, which is not specifically authorized or utilized for public access or public recreational opportunities. Historically, unauthorized use of NCTD's railroad right-of-way has occurred by members of the public. These uses include walking, running, and access to some portions of Agua Hedionda Lagoon.

The proposed project conforms with the public access objectives of the California Coastal Act because it does not propose any change to existing public coastal accessways.

Additionally, the proposed project will not directly result in a noticeable increase in use of natural resource areas, recreational facilities, or public services in the coastal zone. The project will not result in any additional operations staff, nor will it require large numbers of construction staff for significant periods of time. The project will neither facilitate nor restrict local access.

...

The construction access routes that are proposed have been identified with the primary intent of minimizing impacts to sensitive coastal resources as well as not affecting public access to coastal areas.

Maintaining the bridge and the rail line is essential to serve the Los Angeles to San Diego (LOSSAN) Rail Corridor, which is used by NCTD and other rail services, all of which reduce vehicles on I-5. The project will not cause any adverse temporary or permanent access impacts; in fact the only access concern raised is whether the project will affect or preempt planning options for: (1) the coastal rail trail (Exhibit 14, pp. 4-5 and 8-9), a region-wide bicycle and pedestrian trail linking the entire County shoreline region and which contemplates a lagoon crossing in this "middle lagoon" area of Agua Hedionda Lagoon; and/or (2) other regional trails, such as the City's proposed trail along the north shore of the lagoon (Exhibits 13-14), which might cross underneath the proposed bridge if the existing (to the west) and proposed (to the east) trail segments to either side of the bridge were to be connected. In response to Commission staff questions concerning the first of these proposed trails (the Coastal Rail Trail), NCTD states:

While the Bridge 230.6 Replacement Project is in final design, it is NCTD's understanding that plans have yet to be developed by the City for a bike trail alignment in this vicinity. The replacement bridge will be located on the west side of the existing railroad bridge, while various conceptual alignments for a bike trail in this vicinity in the past have depicted that such trail would traverse the lagoon over a sewer bridge that is located to the east of the existing railroad bridge. In addition, [NCTD notes] ... that throughout the last few years the City has been provided with continuous progress reports on the status of the Bridge 230.6 Replacement Project. While the City continues to request updates on the Bridge Replacement Project, the City has never proposed that a bike trail alignment be located on the railroad bridges.

*With regard to the inquiry of whether from an engineering standpoint it is possible to attach a rail trail to the replaced Bridge 230.6 at a later date, NCTD must be concerned and cautious for several reasons. **

Space and access must be preserved on the railroad right-of-way for ongoing maintenance, emergency access, and future expansion. The future vision of railroad right-of-way improvements is shared by the San Diego Association of Governments, the California High Speed Rail Authority, and the California Department of Transportation.

**Also, NCTD's right-of-way is unique in that it is the only passenger rail corridor into and out of San Diego, and it passes through three military installations. In the aftermath of the September 11, 2001 terrorist attacks, there have been FBI warnings about threats against railroads. Consequently, the NCTD Security Department has identified areas of special concern, including bridges and other structures and locations along the railroad right-of-way that it believes should be unavailable for use by a bike trail.*

While the zoning phase of the City's LCP has not been completed, the Commission has certified the Land Use Plan for this area. The Agua Hedionda Land Use Plan, adopted May 1982, with a relevant "Kelly Ranch LCP amendment, May 2000, provides:

7.6 Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development approval for all shorefront properties. All access ways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use. Access ways under the railroad and I-5 bridges may be designed for pedestrian use only, if bicycles could not feasibly be accommodated. If the City of Carlsbad cannot provide access under the two bridges through its best efforts, such access shall be required only if funding assistance is forthcoming

from the Coastal Conservancy or other public or private source and the relevant agencies (Caltrans and the railroad company) have given the necessary approvals.

The October 2000 Mitigated Negative Declaration for the Coastal Rail Trail would appear to bear out NCTD's position that the sewer bridge, which is directly east of the existing rail bridge, is likely to be the preferred location for a north-south Coastal Rail Trail. This document states:

Segment 3: Agua Hedionda Lagoon to Batiquitos Lagoon

Southbound users would cross the Agua Hedionda Lagoon on a bridge spanning the channel for approximately 220' in length (see page 47 of Appendix B). The bridge design would accommodate the future 48" to 54" Vista/Carlsbad Interceptor Sewer Main. The bridge design would not place supporting columns or falsework in the channel. The Class I bicycle path would continue south along the Agua Hedionda Sewer Pump Station.... [Emphasis added][see also, Exhibit 14, p. 11]

[For] Northbound users...The Class I bicycle path would continue north to the Agua Hedionda Lagoon bicycle/pedestrian bridge.

Concerning an east-west trail link under the NCTD bridge, the City of Carlsbad, Recreation Department, has written a letter to the Commission staff dated June 9, 2005, which outlines a request to maximize trail connections and not lose opportunities presented by a bridge replacement proposal. The City's letter (Exhibit 14) includes the statement that:

The construction for a trail connection to the CRT beneath the rail bridge is feasible only if done as a part of the construction for the bridge replacement. Should it not be done as part of this work, the opportunity may be lost for this vital connection.

The City also notes that the City and the Commission required Hubbs-Sea World (6-93-113) to provide lateral access along the north shore of the lagoon between Carlsbad Blvd. and the west side of the NCTD right-of-way (see Exhibit 15, Hubbs-Sea World, access conditions, access findings, and map of access easement). The Commission notes that the Hubbs-Sea World lateral easement is along an alignment clearly designated in the adopted Land Use Plan, whereas it would appear that decisions on whether the trail would cross underneath the NCTD bridge have not yet been made.

NCTD believes the City's request is at best premature, and that there is no "nexus" (i.e., public access burden posed by the project) that would justify additional public access requirements. NCTD states:

As is set forth in the Coastal Consistency Certification Analysis, the proposed project conforms with the public access objectives of the California Coastal Act as it does not propose any changes to existing public coastal access ways. There are no authorized coastal access ways located within the project's APE. Rather, this project will be beneficial to public coastal access by restoring the structural and operational capacity for trains passing over Agua Hedionda Lagoon, as well as alleviating public and environmental concerns.

... alignments and locations for future phases of the Coastal Rail Trail have yet to be proposed or developed.

... the design for this project will remove the existing bridge bents [Exhibit 5] that rail workers currently have to duck under when passing underneath the railroad bridge. As such, rail workers will be able to walk unimpeded under the new bridge upon its construction. In addition, the new bridge abutments will be approximately 15-feet further back from the water's edge, which should create more of an open area underneath the bridge for rail workers. From a safety perspective, it should also be noted that with the new design, individuals will no longer be able to climb up onto the bridge deck from underneath the structure. Based on this information, it appears as though one may surmise that the newly constructed railroad bridge will improve upon the status quo of what currently exists regarding coastal access that may be present in the vicinity of Railroad Bridge 230.6.

In other words, NCTD's position is that while it does not encourage access under the bridge, it does not actively pursue violations and in fact the public does sometimes cross under the bridge. In addition, the proposed bridge replacement design will provide for increased vertical clearance and the removal of bents (cross-bracing) (Exhibits 4-5). NCTD states that: "Such design does not include the construction of fences or trespassing-control barriers in the area located underneath the railroad bridge" and that NCTD "...will continue to work with the City in good faith via the plan review process that is currently in place regarding all proposed third-party projects that may affect the railroad right-of-way." With this commitment, the Commission agrees with NCTD and finds that the project: (1) would not adversely affect any existing public access opportunities; (2) would not preclude options, and may even help facilitate trail access along the north shore of the lagoon and underneath the bridge, if that is ultimately selected as the desired trail link; and (3) would improve public access by maintaining the rail line, which reduces automobile traffic on I-5, in an area where the highway supports public access and recreation. The Commission therefore finds the project consistent with the public access and recreation policies (Sections 30210-30212 and 30252) of the Coastal Act.

B. Wetlands and Environmentally Sensitive Habitat Areas. Section 30233 of the Coastal Act provides that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ...

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines. ...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, [and] nature study,

Section 30240 provides:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

NCTD calculates that by replacing approximately 50 wood pilings with two concrete piers the proposed bridge replacement will slightly *decrease* the amount of wetland fill in Agua Hedionda Lagoon, compared to the existing bridge. NCTD has also surveyed affected habitats and concludes that the project footprint is located outside environmentally sensitive areas. The project nevertheless triggers the 3-part test of Section 30233(a) of the Coastal Act, as well as the functional capacity tests of Section 30233(c), because the bridge replacement will include temporary and permanent placement of bridge piles in the Lagoon, and because Agua Hedionda Lagoon is one of the "priority wetlands" identified in Section 30233(c). The Commission therefore needs to analyze the project's consistency with the allowable use, alternatives, and mitigation tests of Section 30233(a), as well as the tests of Section 30233(c).

Under the first of these tests, a project must qualify as one of the eight stated uses allowed under Section 30233(a). The Commission has considered minor expansions of existing roads, railroad lines, and airport runways in certain situations to qualify as “incidental public service purposes,” and thus allowable under Section 30233(a)(5), but only where no other feasible less damaging alternative exists and the expansion is necessary to maintain existing traffic capacity.

The Court of Appeal has recognized this definition of incidental public service as a permissible interpretation of the Coastal Act. In the case of *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517, the court found that:

... we accept Commission's interpretation of sections 30233 and 30240... In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity.

The project is clearly necessary to maintain existing rail capacity. Moreover, in several recent cases, the Commission has applied the same rationale to transportation modes other than roads (CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport, CC-052-05, NCTD, Bridge Replacement and Second Track, Santa Margarita River, and CC-086-03, NCTD, Second Track, San Onofre Area, Camp Pendleton). For example, in reviewing CC-086-03, NCTD asserted, and the Commission found, as follows:

NCTD statement (CC-086-03):

Allowable Use Test - Coastal Act Section 30233(a)

Section 30233(a) does not authorize wetland fill unless it meets the “allowable-use” test. Similar to the Commission decision regarding safety improvements at the Santa Barbara Airport (CC-58-01), the proposed project is an allowable use as an incidental public service because it is necessary to maintain existing passenger service.

Commission Response (CC-086-03):

The Commission agrees and finds that the project is a limited expansion and is necessary to maintain existing capacity, and can be considered an allowable use as an incidental public service under Section 30233(a)(5).

In CC-052-05, the Commission found:

Given this information, the Commission believes the same conclusion for the subject bridge replacement that it relied on in CC-86-03 is warranted, and that the project can be considered is a limited expansion and necessary to maintain existing capacity, and, therefore, an allowable use as an incidental public service under Section 30233(a)(5).

In addition, unlike the above-two cases, the proposed project does not involve additional tracks; these cases are cited to establish that rail line maintenance can qualify as an incidental public service under Section 30233(a) when it is necessary to maintain existing rail capacity. Furthermore, while Agua Hedionda Lagoon is one of the “priority wetlands” afforded additional protection under Section 30233(c), which was not at issue in the above-referenced cases, the Commission finds that: (1) the project will not alter or affect the functional capacity of Agua Hedionda; (2) even if it considered the project to alter the lagoon, the project can be considered a “very minor incidental public facility” based on the same rationale discussed above and in the Commission’s wetlands guidelines¹ and several past Commission permit reviews.² These reviews and guidelines apply the same test for a project that the Commission has determined is necessary to maintain existing capacity to constitute an allowable use under Section 30233, regardless of whether it is being viewed as an “incidental public service” under Section 30233(a), or a “very minor incidental public facility” under Section 30233(c). Thus, the Commission has determined that a limited expansion of an existing transportation facility that is necessary to maintain existing capacity is an allowable use as an incidental public service under either Section 30233(a)(5) and Section 30233(c). Moreover, the project will not adversely affect the functional capacity of Agua Hedionda Lagoon, a secondary test of Section 30233(c). Therefore, the Commission finds that the project is an allowable use as an incidental public service and a very minor incidental public facility under both Sections 30233(a) and 30233(c) of the Coastal Act.

While the proposed single-track bridge is necessary to maintain existing capacity, having reviewed a number of NCTD double-track proposals, the Commission is aware of the potential for a future second bridge across this right-of-way. The Commission wishes to reiterate the notice it gave NCTD in reviewing two previous double-track consistency certifications (CC-086-03 and CC-052-05):

The Commission agrees and finds that the project is a limited expansion and is necessary to maintain existing capacity, and can be considered an allowable use as an incidental public service under Section 30233(a)(5). In making this finding the Commission notes that future double tracking proposals may not qualify under this section, because at some point with increasing numbers of double tracking proposals, the double tracking: (a) will no longer be limited; and (b) will contain enough length of a second set of tracks to in fact constitute an increase in capacity. However at this time and in this location the Commission finds that the double tracking does not meet either of these thresholds that would render the project ineligible for consideration as an incidental public service.

¹ The Commission’s wetland guidelines include a footnote for “incidental public services,” which states: [Footnote 3:] “When no other alternative exist, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted.” The footnote for “very minor incidental public facilities” states: “(see footnote #3).”

² Including Coastal Development Permit 6-97-11, City of Carlsbad, Cannon Rd./Kelly Ranch.

The Commission believes that for any second track ultimately proposed across the lagoon, the same cautionary note will be applicable, and that the question of whether a second track across this right-of-way can be found an incidental public service or consistent with Section 30233 as the least environmentally damaging feasible alternative remains an unresolved issue at this time. The Commission will address that question at the appropriate time.

Concerning the alternatives test of Section 30233(a) for the proposed project, NCTD has examined the alternative of a free-span bridge, which would avoid wetland fill, and rejected it as infeasible, stating that it would add \$500,000 to the project cost (which NCTD currently estimates to be \$2 million), and that:

The Lagoon Span Bridge Design Alternative would feature a minimum center span length of 126 ft. in order for the columns to clear the OHWM [Ordinary High Water Mark] zone, and secure into abutments outside the OHWM on the northern and southern edges of the lagoon. This alternative would meet the purpose and need of the Project. However, this option would require excessively deep and costly piers to withstand the American Railway Engineering and maintenance-of-Way Association (AREMA) loading criteria. Furthermore, this bridge structure would require that the weight of the end spans resist the bending load when a train in the center span, so that the end spans to not lift up off the abutments when a train is in the center of the bridge. The bridge would need to be lengthened by at least 25 percent to avoid such “uplift” at the abutments. Historically, the railroad has preferred a series of “simple” spans to longer spans for maintenance purposes. As a point of comparison, the longest span designed for the BNSF Railroad to date using pre-cast concrete girders is 90 feet, currently under construction in San Bernardino.

The Commission agrees that no less environmentally damaging alternative for this single-track bridge replacement project is feasible or available.

Concerning mitigation, the existing piers (50 piers, 14 inch-diameter) and bridge sills total slightly over 140 sq. ft. of existing wetland fill, which would be removed and replaced with two nine ft. diameter pilings totaling 128 sq. ft. of wetland fill. The result is a 12 sq. ft. reduction in wetland fill. NCTD also estimates less shading from the smaller extent of structural pilings over the lagoon. Because the project will not result in a permanent reduction in wetland acreage, the Commission also finds that no further wetland mitigation is required under Section 30233. For similar reasons, because it will reduce the bridge piling footprint in the lagoon, the project will slightly improve water circulation and will not adversely affect the functional capacity test of the Lagoon. NCTD also notes that an additional benefit of removing the existing timber trestle bridge is the avoidance of future, ongoing maintenance needed for the timber trestle bridge and increased water flow through the lagoon channel. The Commission agrees and concludes that the project is consistent with all the tests of Section 30233.

Concerning other marine and environmentally sensitive habitat issues raised, NCTD states:

The proposed project is located in the area of Agua Hedionda Lagoon. No known sensitive marine resources are located in the area of construction activity associated with the lagoon.

Agua Hedionda Lagoon is listed as a Proposed Critical Habitat for the tidewater goby; however, there are no known tidewater gobies in Agua Hedionda Lagoon. Agua Hedionda Lagoon was designated as critical habitat for the endangered tidewater goby based upon the USFWS assessment that the Lagoon could be used in the event of a future reintroduction of the species throughout its native area. The proposed project would not interfere with the USFWS' ability to reintroduce the species in the future, because it would not result in an adverse effect to the existing environment.

The proposed project is located in an area identified as Essential Fish Habitat (EFH). Given the temporary nature of the proposed project construction activities within the lagoon, the net reduction of bridge structures within the lagoon (upon completion of the proposed project), and elimination of the need for future maintenance/repair work to the timber trestle bridge, no adverse effect to EFH is anticipated to occur with implementation of the proposed project (correspondence, National Marine Fisheries Service (NMFS), 1/28/05).

In Agua Hedionda Lagoon, the NMFS is concerned about the possible spread of Caulerpa Taxifolia within the EFH area. Agua Hedionda Lagoon is considered to be an infected System by the NMFS for Caulerpa Taxifolia. Based on the Agua Hedionda Lagoon Caulerpa Taxifolia Eradication Program, Summer 2003 Report, and a project-specific Caulerpa survey conducted by NCTD in September 2003 for repairs to Bridge 230.6, no Caulerpa has been found in the area of the proposed project (Bridge 230.6). No adverse effect associated with Caulerpa is anticipated to occur. However, based on correspondence with the NMFS (Hoffman, 1/28/05), compliance with the Draft Caulerpa Control Protocol (version 2.0) is required prior to project construction.

Through an informal consultation with the USFWS, Carlsbad Field Office (correspondence, DiGregoria, 2005), it was determined that the proposed project would have no effect on listed species. The USFWS is requiring that the manufactured slopes created by the proposed project be reseeded with native upland species after construction activities are complete.

... The permanent impacts to sensitive upland habitats (Diegan coastal sage scrub, disturbed Diegan coastal sage scrub) and Waters of the U.S. cannot be avoided. However, as can be seen, the permanent impacts to uplands and Waters of the U.S. are very small and have been minimized to the maximum extent possible. The proposed project will not cause any permanent effects on use of parks and recreation areas. ...

Implementation of the proposed project would result in the direct permanent loss of 0.124 acre of Diegan coastal sage scrub and 0.357 acre of disturbed Diegan coastal sage scrub. Construction of the project would result in a temporary impact to 0.001 acre of Diegan coastal sage scrub and 0.432 acre of disturbed Diegan coastal sage scrub. Construction of the project would result in a permanent impact to 0.003 acre of non-wetland Waters of the U.S. and temporary impacts to 0.014 of non-wetland Waters of the U.S.

As noted above, although it determined no federally listed species were present, the Fish and Wildlife Service requested that NCTD agree to revegetate any disturbed areas with native species; in addition, NOAA Fisheries has requested that NCTD perform a pre-construction caulerpa survey. NCTD has agreed to both of these requests. Mitigation for permanent impacts to upland habitat will occur through revegetation (hydroseeding) of the disturbed and newly created slopes (Exhibits 11-12). The proposed hydroseed mix is similar to that previously approved by the U.S. Fish and Wildlife Service (USFWS) for NCTD's San Onofre Second Main Track project (CC-086-03). NCTD also proposes to replace the riprap located on the lagoon channel bottom to its original condition upon completion of pier construction, and to remove invasive vegetation from the drainage detention area located north of the lagoon channel, immediately east of the project site. This area is dominated by upland non-native and invasive species. Topographically, the drainage detention area does not provide an outlet for stormwater to enter Agua Hedionda Lagoon. In addition to removing the invasive vegetation, NCTD proposes to hydroseed approximately 0.014 acre of the drainage detention area with the upland species described above (and in Exhibit 12). Finally, in response to the Commission staff's request, NCTD has agreed that any revegetation plans would be submitted to the Commission staff for its review and concurrence, prior to commencement of construction.

The Commission agrees with NCTD that with these measures and coordination incorporated into the project as described in the previous paragraph, combined with the water quality measures (described in the following section of this report), the project has been designed to prevent impacts which would significantly degrade any nearby environmentally sensitive habitat areas, to be compatible with the continuance of any environmentally sensitive habitat areas, and to improve wetland functions and increase acreage compared to the existing bridge. The Commission therefore finds the project consistent with the requirements of Sections 30233 and 30240 of the Coastal Act.

C. Water Quality. Section 30231 of the Coastal Act provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 provides:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

NCTD has included commitments for water quality protection in its consistency certification, stating:

The potential impacts to water quality are limited to the construction phase of the project only. Pollutants of concern during construction activities are erosion and sedimentation, and potential for hazardous materials spills or leakage from construction vehicles.

The proposed project would include the preparation of a Storm Water Pollution Prevention Plan (SWPPP) by the project engineer, in compliance with the required National Pollution Discharge Elimination System (NPDES) general permit issued by the Regional Water Quality Control Board (RWQCB), identifying construction and post-construction best management practices (BMPs) to protect water quality. The temporary and permanent BMP's will conform to the Caltrans Storm Water Quality Handbook, Construction Site Best Management Practices Manual, November 2000. After the project construction is completed, temporarily impacted areas will be reseeded with native upland species.

The proposed project would utilize Best Management Practices (BMPs) to avoid adverse environmental impacts. The BMPs would generally comply with the California Construction Handbook, latest edition. Such measures would include, but not be limited to the preparation of a Storm Water Pollution Prevention Plan (SWPPP), in compliance with the required National Pollution Discharge Elimination System (NPDES) general permit issued by the Regional Water Quality Control Board (RWQCB) [including]...

Best Management Practices (BMPs)

- *Filter Fabric Fencing;*
- *Hay Bales;*
- *Sand Bags;*
- *Stabilized Construction Entrances;*
- *Construction Road Stabilization;*
- *Dust Control;*
- *Construction Area Limits Fencing and Inspection;*
- *Access Controls;*

- *Staging Area Controls;*
- *A Spill Prevention and Containment Plan;*
- *Vehicle & Equipment Maintenance, Fueling and Fuel Storage Requirements; and,*
- *Trash and Sanitation Controls.*

Concerning hazardous materials, NCTD states:

Contractor operations are not anticipated to use or generate any unusual or significant amounts of hazardous wastes. All wastes generated will be disposed of at an approved disposal site. Hazardous materials temporarily held on-site will be stored in secure areas and in properly placarded containers. No hazardous materials will be stored within 150 feet of sensitive areas (i.e., Agua Hedionda Lagoon). Potentially hazardous materials, which may be present on-site during construction of the project, are those generally associated with the operation and maintenance of vehicles and equipment. Though those potentially hazardous materials may be present on-site, the amount of material will be limited due to the mobile nature of the installation activities. The Contractor will develop a Spill Prevention Containment and Countermeasure (SPCC) Plan before construction begins.

NCTD also states:

In order to prevent bridge hardware/debris from entering Agua Hedionda Lagoon during bridge removal activities, the following impact avoidance and minimization techniques shall be used.

- *A debris net shall be installed under the existing bridge prior to commencement of bridge removal activities. No existing bridge members or hardware shall be permitted to fall in the lagoon.*
- *Prior to removal any portion of the existing bridge that is within the lagoon (e.g., concrete sills), floating surface booms and underwater debris nest shall be installed.*

The bridge removal will benefit water quality through removal of creosote soaked piles from the lagoon. As noted in the previous section of this report, erosion controls will also include post-construction revegetation efforts. In response to the Commission staff's request, NCTD agrees that the water quality, spill prevention, and revegetation plans will be submitted to the Commission staff for its review and concurrence, prior to commencement of construction. With the above measures, the Commission finds the project would not cause significant water quality impacts and would be consistent with the water quality policies (Sections 30231 and 30232) of the Coastal Act.

D. Public Views. Section 30251 of the Coastal Act provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Addressing visual issues, NCTD states:

Section 30251. *The proposed project is located west of I-5, within NCTD ROW, inaccessible to the general public. Implementation of the proposed project will improve views to the west from automobiles using I-5 through removal of the existing timber trestle bridge that obstructs views to the west. The new bridge will require substantially less bridge mass in Agua Hedionda Lagoon, increasing the views to the west. The proposed project will not adversely affect the scenic or visual quality of the area.*

The proposed project would not adversely affect the scenic and visual qualities of the area. The proposed project would result in a concrete railroad bridge in place of the timber trestle bridge within the Railroad ROW, that would decrease the mass in Agua Hedionda Lagoon, improving views from I-5 to the west.

The Commission agrees and finds that the project would not adversely affect public views and would be consistent with the character of the surrounding highway and bridge structures. The Commission therefore finds the project consistent with Section 30251 of the Coastal Act.

IV. Substantive File Documents

1. CC-052-05, NCTD, Bridge Replacement and Second Track, Santa Margarita River (Camp Pendleton) to Oceanside.
2. CC-086-03, NCTD, Second Track, San Onofre Area, Camp Pendleton.
3. CC-029-02, NCTD, Oceanside-Escondido Rail Project.
4. Coastal Development Permit 6-97-11, City of Carlsbad, Cannon Rd./Kelly Ranch.
5. City of Carlsbad, Local Coastal Program (LCP), including Agua Hedionda Land Use Plan (May 1982), and Kelly Ranch LCP amendment (May 2000).
6. Pending NCTD Consistency Certification CC-048-04 (NCTD, Del Mar Bluffs Stabilization Project).

7. CC-064-99, Metropolitan Transportation Agency, Extension of Light-Rail, City of San Diego.
8. CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport.
9. Coastal Development Permit 6-93-113, Hubbs-Sea World.
10. NCTD Coastal Development Permits No. 6-03-102-G (NCTD - Agua Hedionda emergency repairs), 6-02-152 (NCTD - San Luis Rey River bridge repair), 6-02-151 (NCTD - Agua Hedionda bridge), 6-02-102 (NCTD - Del Mar drainage outlets), 6-02-80 (NCTD - Santa Margarita Bridge repair), 6-01-64 (NCTD - Balboa Avenue), 6-01-108 (NCTD - Tecolote Creek), 6-93-60 (NCTD - Del Mar), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD – Carlsbad), and 6-93-105 (NCTD - Camp Pendleton).